IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 426 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJITKUMAR SHANTILAL GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioners

MR BY MANKAD A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 15/12/2000

ORAL JUDGEMENT

The original accused of Criminal Case No. 5088 of 1990 registered on the basis of chargesheet filed by Police in CR No.I. 101/84 of Gandhinagar Police Station have by preferring this Criminal Relvision Application u/s 397 of the Criminal Procedure Code, 1973 (for short "Cr. P.C.") challenged the correctness, legality and

propriety of the impugned order dated 7-8-1993 passed below the application exh. 34 in the aforesaid criminal case requesting the trial Court to discharge them from the case on the ground that the case initiated against them is time barred.

2. The facts leading to this criminal revision application in a nutshell are as follows :

On or about 4-4-1984 the accused no. 1 to 5 were the Goverrnment servants and they were serving as Deputy Executive Engineer, Assistant Engineer, Work Charge Clerk, and Work Charge Clerk respectively. As per the complaint lodged by the Police Inspector, Gandhinagar on 4-4-1984 in Gandhinagar Police Station, it is the case of the prosecution that the Government had granted the work order in favour of one Ajit Construction Company for the construction of the complex in Sector No. 13 of Gandhinagar. The accused were supervising the work with regard to the construciton work of the complex. It is alleged in the complaint that at about 11-00 hours that construciton was collapsed and out of the labourers who were present at the site one labourer Lakshmiben died and other laborers sustained injuries. It is the case of the prosecution that because of negligence of the contractor to whom that construction work was entrusted and the accused - present revision petitioners were responsible, as the incident took place as a result of their negligence. The complainant Mr. N.K. Shukla who was present in Gandhinagar Police Station recieved the information, from one P.S.I. Mr. Jadeja and by collecting the information, he lodged the complaint in Gandhinagar Police Station at about 19-15 hours on the same day i.e. 4-4-1984. In that complaint the owner / the partner of Ajit Construction Company was shown as the accused. The complainant has stated that the concerned officers and employees of P.W. Deaprtment, Division No. 4, Gandhinagar were also equally responsible and hence they were cited as the accused in the F.I.R. It is pertinent to note that the complainant did not disclose the name of the present revision petiioners as the accused.

3. As submited by Mr. P.K. Jani, learned advocate for the revision petitioners the Investigating Officer conducted the police investigation, before filing the charge sheet agaisnt the accused in the Court of the learned Magistrate, Gandhinagar. As per the information available to the revision - petitioners, the concerned officer submitted an application to the State Government for according sanction to prosecute the accused in the

Court. That application was made on 17-1-1988. Pursuant to that application dated 17-1-1988, the State Government accorded sanction to the police to prosecute the accused in the court of law, vide sanction letter dated 9-5-1989. On receipt of that sanction, the Investigating Officer filed the charge sheet against eleven persons including the present five revision pettioners in the Court of the learned Magistrate on 25-10-1990. That charge sheet came to be registered as Criminal Case No. 5088 of 1990.

3.1 During the pendency of that case, the petitioners submitted the application exh. 34 to the learned Magistrate on 25-10-1990, requesting the learned Magistrate to discharge them from the case on the ground that the case registered against them is time barred. That application exh. 34 was heard and after heraing the arguments of the learned advocates of both the parties, the learned Magistrate by pasing an order dated 7-8-1993 rejected that application. As against that rejection of the application exh. 34, the present revision petitioners have filed this criminal revision application.

4. Heard Mr. P.K. Jani learned advocate for the revision petitioners and Mr. B.Y. Mankad learned A.P.P. for the State. I have perused the impugned order dated 7-8-1993 passed below the application exh. 34. I have also taken into consideration the grounds stated in the memo of this criminal revision application.

5. Mr. P.K. Jani, learned advocate for the petitioners has argued that the police has filed the charge sheet against the accused for the offences punishable u/s 304A-120B-337-338 of the Indian Penal Code. As per his arguments, maximum sentence prescribed for the offence punishable u/s 304A of the Indian Penal Code is imprisonment for two years. Likewise, maximum sentences prescribed for the offences punishable u/s 337 and 338 of the I.P. Code are imprisonment for six months and two years respectively. As per Section 120(b) of the I.P.Code, the accused can be punished in the same manner as if he had abeted the main offence and therfore the offences were such that maximum sentence of imprisonment for two years can be inflicted on the accused. Mr. P.K. Jani has further argued that in view of Section 468 (2) (c) of the Cr. P. C., the period of limitation is of three years, if the offence punishable for imprisonment for the term not exceeding three years. Here in this case, maximum sentence of two years can be inflicted for the offence punishable u/s 304A-337-338 of the I.P. Code and therefore as per the arguments of Mr. Jani as the

period of limitation is prescribed in this case, the Investigating Officer ought to have filed the charge sheet on or before 3-4-1987. Instead of filing the charge sheet on 3-4-1987 the Investigating Officer has filed the charge sheet on 25-10-1990 and thus prima facie there is a delay of about 2 years and 3 months for filing the charge sheet. For this delay, the prosecution has not stated anything in the charge sheet to explain the delay. No separate application u/s 473 of the Cr. P. C. has been submitted by the prosecution stating the circumstances and the facts as to why delay has been occasioned for filing chargesheet on 25-10-1990.

6. The learned Magistrate has observed in his order that the period of limitation of three years will start from the date of the sanction u/s 197 of the Cr. P. Code to prosecute the accused. Therefore, as per the observation of the learned Magistrate, the case registered against the accused is within the time prescribed. Shri P.K. Jani, learned advocate for the revision petitioners has argued that the learned Magistrate has lost the sight of Section 470 of the Cr. P. C. He has further argued that looking to the facts of this case, sub section 3 of section 470 of the Cr. P. C. is applicable to this case. As per section 470 of the Cr. P. Code for computing the period to ascertain as to whether particular case is within time or barred by limitation, the time required for obtaining consent or sanction is required to be excluded. The learned Magistrate appears to have lost sight of explanation given below sub section 3 of Section 470 of the Cr. P. C.. To understand the subject, sub section 3 of Section 470 of the Cr. P. C. is required to be reproduced, which reads as follows :

"Section 470. Extension of time in certain cases.

(1) x x x x x

(2) x x x x x

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the

period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded."

Explanation :- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both the excluded."

7. Under these circumstances, here in this case Shri P.K. Jani learned advocate for the revision petitioners has made a statement at the bar with his responsibility that as per the information received from his clients the concerned Officer or the concerned Department moved the Government to accord sanction to prosecute the accused by an application dated 17-1-1988. Shri B.Y. Mankad, learned A.P.P. has been given ample opportunity to ascertain or cross-check the date of such application made to the State Government, but he is not in a position to controvert this date i.e. 17-01-1988. On the strength of such application dated 17-1-1988, the State Government accorded the sanction on 09-05-1989 for which there is no dispute and therefore the time spent in between 17-1-1988 and 9-5-1989 is required to be deducted while computing the period of limitation. Mr. P.K. Jani has argued that this period comes to about 1 year, 3 months and 27 days. Even if we deduct period of 1 year, 3 months and 27 days from the period of undisputed delay of 2 years and 3 months, delay is of around 10 months. Therefore, there is a delay of around 10 months. This delay has not at all been explained.

8. MR. B.Y. Mankad, learned A.P.P. for the revision opponent - State has fairly conceded that this period spent for obtaining consent or sanction can only be excluded, if the application seeking sanction was made within three years from the date of 4-4-1984. Had the concerned Officer made an application before 3-4-1987 this period can be excluded. Here in this case, the concerned department or the concerned Officer moved the Government to accord sanction on 17-01-1988 i.e. about 9 molnths after 3-4-1987 and therefore this period spent for obtaining sanction cannot be excluded for computing the period of limitation. If the period of about one year and four months spent for obtaining sanction is not excluded, then the delay is of 2 years, 3 months and 27 days. That delay has not been explained.

9. In view of the discussion made hereinabove, the learned Magistrate has taken incorrect view without keeping in mind the provisions of Section 470 of the Cr. P. C. more particularly section 470 (3) of the Cr. P. C. and therefore the impugned order challenged in this Criminal Revision Application is incorrect, illegal and improper and the same is required to be set aside.

10. In view of what is stated hereinabove, this criminal revision application deserves to be allowed and accordingly this criminal revision application is allowed and the impugned order dated 7-8-1993 passed below an application exh. 34 submitted by the accused in Criminal Case No. 5088 of 1990 which is still pending on the file of the learned J.M.F.C., Gandhinagar, is set aside and consequently the application exh. 34 is allowed and the

accused i.e. the present revision petitioners are discharged from the case on the ground that the case is time barred. Rule is made absolute, to the aforesaid extent.

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/JVSatwara/